

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM J. GRADFORD,

Plaintiff,

v.

F. VELASCO and T. WEBSTER,

Defendants.

No. 1:20-cv-00543-NONE-EPG (PC)

ORDER CONCERNING NOTICE FOR
VOLUNTARY DISMISSAL

(ECF No. 42)

On April 16, 2021, Plaintiff William J. Gradford, a former pretrial detainee proceeding *pro se* and *in forma pauperis*, filed a document entitled “Plaintiff request dismiss cases and all pending other cases voluntar[i]ly claims and defendants.” (ECF No. 42). Plaintiff’s filing states that Plaintiff “voluntarily dismiss[es]” this case all claims and defendants and reschedule settlement conference note above Plaintiff does not name Trexiera as defendant, so the court will not address the viability of a claim against Trexiera for retaliation as stated.”

Because Defendants have filed an answer, (ECF No. 19), and did not stipulate to the voluntary notice, a plaintiff may dismiss this case under Rule 41(a) only upon with Defendants’ stipulation, Fed. R. Civ. P. 41(a)(1)(A)(ii), or upon a motion and court order, *id.* 41(a)(2). *Accord Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th Cir. 1997) (“Once the defendant serves an answer or a motion for summary judgment, however, the plaintiff may no longer voluntarily dismiss under Rule 41(a)(1), but must file a motion for voluntary dismissal under Rule 41(a)(2).

1 Unlike a Rule 41(a)(1) notice of dismissal, a Rule 41(a)(2) motion requires court approval.”
2 (citations omitted)).

3 A Rule 41(a)(2) motion for voluntarily dismissal “is addressed to the district court's sound
4 discretion.” *Stevedoring Serv. of Am. v. Armilla Intern. B.V.*, 889 F.2d 919, 921 (9th Cir.1989).
5 “A district court should grant a motion for voluntary dismissal under Rule 41(a)(2) unless a
6 defendant can show that it will suffer some plain legal prejudice as a result.” *Smith v. Lenches*,
7 263 F.3d 972, 975 (9th Cir.2001). “ ‘[L]egal prejudice’ means ‘prejudice to some legal interest,
8 some legal claim, some legal argument.’ ” *Id.* at 976 (quoting *Westlands Water Dist. v. United*
9 *States*, 100 F.3d 94, 97 (9th Cir.1996)).

10 Accordingly, Defendants are directed to file a response or statement of non-opposition to
11 the notice within fourteen (14) days of the date of this order. Alternatively, the parties may file a
12 stipulation of dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii).

13 IT IS SO ORDERED.
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15 Dated: April 19, 2021

16 /s/ Eric P. Gray
17 UNITED STATES MAGISTRATE JUDGE
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